

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tiffany Dempsey	Team: Team # 1	CCRB Case #: 201307074	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/05/2013 12:45 PM	Location of Incident: At the entrance and inside of § 87(2)(b)	Precinct: 121	18 Mo. SOL 2/5/2015	EO SOL 2/5/2015	
Date/Time CV Reported Mon, 08/05/2013 1:18 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/05/2013 1:18 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Thomas Smith	00000	939495	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Cimmino	11712	933693	121 PCT
2. POM Andrew Lipari	00580	938862	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Thomas Smith	Discourtesy: At the entrance of § 87(2)(b) Lieutenant Thomas Smith spoke discourteously to § 87(2)(b)	
B.LT Thomas Smith	Abuse: Lieutenant Thomas Smith entered and searched § 87(2)(b) in Staten Island.	
C.LT Thomas Smith	Discourtesy: Inside of § 87(2)(b) Lieutenant Thomas Smith spoke discourteously to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) filed a complaint with the CCRB over the telephone on August 5, 2013.

On August 5, 2013, at approximately 12:45 p.m., police arrived at § 87(2)(b)'s residence, § 87(2)(b) in Staten Island, when requested to settle a dispute between § 87(2)(b) and his landlord, § 87(2)(b). Lt Thomas Smith, PO Anthony Cimmino, and PO Andrew Lipari of the 121st Precinct arrived and interacted with § 87(2)(b) and § 87(2)(b)'s interaction with Lt Smith, PO Cimmino and PO Lipari resulted in the following allegations:

- **Allegation A – Discourtesy: At the entrance of § 87(2)(b) Lieutenant Thomas Smith spoke discourteously to § 87(2)(b)**

§ 87(2)(g)

- **Allegation B - Abuse of Authority: Lieutenant Thomas Smith entered and searched § 87(2)(b) in Staten Island.**

§ 87(2)(g)

- **Allegation C – Discourtesy: Inside of § 87(2)(b) Lieutenant Thomas Smith spoke discourteously to § 87(2)(b)**

§ 87(2)(g)

- § 87(4-b) § 87(2)(g)

Mediation was offered to § 87(2)(b) on August 16, 2013; however, § 87(2)(b) rejected mediation.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old male who stands 5'11'', weighs 240 pounds, and has white hair and brown eyes.
- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided an intake statement on August 5, 2013 (encl. B4) and a phone statement on August 14, 2013 (encl. C1). He was interviewed at the CCRB on August 27, 2013 (encl. C2-4). He provided an additional phone statement on April 2, 2014 (encl. C15). § 87(2)(g)

On August 3, 2013 two police officers responded to a call made by § 87(2)(b)'s landlord, § 87(2)(b) and arrived at § 87(2)(b)'s residence. The officers sent § 87(2)(b) away. The following day, August 4, 2013, two different officers arrived at § 87(2)(b)'s residence due to a call from § 87(2)(b). These officers also sent § 87(2)(b) away and told § 87(2)(b) if he saw her again to call the police himself.

On August 5, 2013, § 87(2)(b) saw § 87(2)(b) sitting in a car outside his residence. § 87(2)(b) called 911 and at approximately 12:45 p.m., police arrived. PO Andrew Lipari and PO Anthony Cimmino, identified by investigation, knocked on § 87(2)(b)'s door and were speaking to him, when Lt Thomas Smith walked over and told § 87(2)(b) that he was sick of this “bullshit,” it was going to end that day, and that § 87(2)(b) was going to let § 87(2)(b) inside the apartment. § 87(2)(b) described PO Lipari as a white male, in his 30s who stands 5’9”-5’10” and has a stalky build. He described PO Cimmino as a white male, in his 30s who stands 5’9”-5’10” and has an average build. § 87(2)(b) described Lt Smith as a white male in his 40s who stands 6’2”, weighs approximately 180 pounds, and has black hair with some hair sticking up in the front. Lt Smith was wearing a white shirt with a gold name plate that read, “Smith”, and black surgical gloves.

Lt Smith asked § 87(2)(b) if there was a flood in his house. There had been a leak inside the closet in § 87(2)(b)'s home. § 87(2)(b) suspected the leak was caused by his neighbor's air conditioning unit. § 87(2)(b) explained to Lt Smith there was currently no flood. Lt Smith told § 87(2)(b) that he needed to let § 87(2)(b) in to inspect the house. § 87(2)(b) said that he did not have to allow her in because she did not let him know she was coming over in advance. Lt Smith told § 87(2)(b) that he had no rights and that there would be consequences if he did not open the door. § 87(2)(b) then opened the door and walked inside; Lt Smith, PO Lipari, PO Cimmino, § 87(2)(b) and a § 87(2)(b) identified as § 87(2)(b)'s son § 87(2)(b) followed.

Once they walked through the doorway, they were in the living room. Lt Smith asked § 87(2)(b) who lived in his residence; § 87(2)(b) stated he and his wife lived at the residence. Lt Smith picked up a Verizon cable box from the floor, read § 87(2)(b)'s name from it, and placed it back onto the floor. § 87(2)(b) PO Lipari, PO Cimmino, and Lt Smith looked around the living room while § 87(2)(b) took pictures. Lt Smith asked where the laundry room was. § 87(2)(b) took everyone through his kitchen the closet which holds the water heater, air conditioning unit, washer and dryer. § 87(2)(b) opened the door to the closet and § 87(2)(b) took pictures.

Lt Smith told § 87(2)(b) that they needed to go upstairs, but did not state why. § 87(2)(b) asked if there was a flood upstairs too, and Lt Smith stated, “Don’t be a wise guy.” § 87(2)(b) explained to Lt Smith that his son, § 87(2)(b) was asleep upstairs and he needed a second to go wake him up. Lt Smith called § 87(2)(b) a liar because when he had asked earlier, § 87(2)(b) did not tell him that § 87(2)(b) was living at his residence. § 87(2)(b) walked up the stairs and Lt Smith, PO Lipari, PO Cimmino, § 87(2)(b) and § 87(2)(b) followed.

Upstairs, § 87(2)(b) woke up his son, § 87(2)(b) who was asleep in his bedroom. Lt Smith asked § 87(2)(b) how long he had lived at the residence. § 87(2)(b) told Lt Smith he lived there for one year. § 87(2)(b) was uncertain if Lt Smith stepped into § 87(2)(b)'s bedroom to speak to § 87(2)(b) or if he just stood in the doorway.

§ 87(2)(b) then walked into his master bedroom and Lt. Smith followed him into the bedroom. PO Lipari and PO Cimmino remained in the upstairs hallway, while § 87(2)(b) continued to take pictures of the second floor.

Upon leaving the house, after being there for about 15-20 minutes, § 87(2)(b) told Lt Smith that § 87(2)(b) had been harassing him, and that he had witnesses to prove so. Lt Smith asked § 87(2)(b) if he expected him to believe a § 87(2)(b)-old woman had been harassing him. Once outside, § 87(2)(b) pointed out a neighbor that had previously witnessed § 87(2)(b) harassing him. As the neighbor, § 87(2)(b) began to speak, Lt Smith told him to shut his mouth and to shut up. While this was occurring, a second neighbor, § 87(2)(b) who was standing about 20 feet away, told Lt Smith he could not talk to people in such a way. Lt Smith then stated, "Shut your mouth, old man, if you know what's good for you" to § 87(2)(b) and Lt Smith exchanged words. Lt Smith, PO Lipari and PO Cimmino walked to their vehicles and left.

A few days later, § 87(2)(b) went down to the 121st PCT to follow up on the police report of the incident. He was told the report was not ready. § 87(2)(b) went back to the 121st PCT on August 26, 2013. At the stationhouse, an officer told § 87(2)(b) the police report would not help him because harassment charges had been filed against him.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old white male who stands 6'0", weighs 210 pounds, and has brown hair and brown eyes.
- § 87(2)(b)

§ 87(2)(b) provided a phone statement on August 30, 2013 (encl. C16), and was interviewed at the CCRB on January 14, 2014 (encl. C17-18). § 87(2)(g)

§ 87(2)(b) was awoken by his father, § 87(2)(b) who came into his bedroom and told him that officers were at the house and needed to take pictures. While § 87(2)(b) was speaking to § 87(2)(b) Lt Smith, PO Cimmino, PO Lipari, § 87(2)(b) and § 87(2)(b) stood at the doorway of § 87(2)(b)'s bedroom.

Lt Smith then entered § 87(2)(b)'s bedroom. Lt Smith asked § 87(2)(b) where he lived and how long he had lived there. § 87(2)(b) informed Lt Smith that he had been living with his parents for about a year, but also stays at other residences. Lt Smith turned around and stated, "Oh there you go, you have him right there" to § 87(2)(b)

§ 87(2)(b) walked out of § 87(2)(b)'s bedroom and Lt Smith followed. Lt Smith entered § 87(2)(b)'s bedroom and § 87(2)(b) entered behind him. PO Cimmino, PO Lipari, § 87(2)(b) and § 87(2)(b) waited in the hallway. § 87(2)(b) heard § 87(2)(b) tell Lt Smith about the loft. No one entered the loft. The conversation between Lt Smith and § 87(2)(b) was calm, no one raised their voice. The two stayed in § 87(2)(b)'s bedroom for approximately two minutes.

After being upstairs for approximately 10 minutes, Lt Smith walked down the stairs; PO Cimmino, PO Lipari, § 87(2)(b) and § 87(2)(b) followed behind him. § 87(2)(b) followed everyone downstairs. He stopped halfway on the stairs and watched the officers from the staircase.

Before exiting, Lt Smith stopped and picked up a Verizon cable box off of the floor. Lt Smith read the name § 87(2)(b) off of the box then placed it back down and walked out of the residence.

§ 87(2)(b) asked § 87(2)(b) why he let officers inside the residence. § 87(2)(b) explained to him that he did not want to let them in, but Lt Smith told him, "This is bullshit you have to let us in now, this is three times that we've been here," and that they bullied their way in.

§ 87(2)(b) was not aware of any leak inside the residence, and believed § 87(2)(b) wanted to take pictures because she was getting ready to sell the house. § 87(2)(b) had tried to get into the residence on prior occasions with her key; but when unable to, she called the police each time until she was able to enter the residence.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old white male.

Phone Statement

§ 87(2)(b) provided a phone statement on April 17, 2014 (encl. C23).

§ 87(2)(b) saw the officers outside § 87(2)(b)'s home for about five minutes before they entered the house; § 87(2)(b) was already inside. § 87(2)(b) was not standing near § 87(2)(b)'s home. Later, when the officers exited the house, § 87(2)(b) who was now standing outside § 87(2)(b)'s home, told the officers, that the situation with § 87(2)(b) was considered harassment. Lt Smith told § 87(2)(b) "Mind your business, old man." § 87(2)(b) replied, "You want to see what an old man can do?" Lt Smith did not respond to this comment; he walked away and left the incident location.

Witness: § 87(2)(b)

- § 87(2)(b) is a female. She is § 87(2)(b)'s landlord.

Phone Statement

§ 87(2)(b) provided a phone statement on September 3, 2013 (encl. C22).

On August 5, 2013, when § 87(2)(b) went to § 87(2)(b)'s residence to retrieve a copy of his house key he threatened her. Police then arrived and § 87(2)(b) permitted the police officers to enter his residence.

Witness: § 87(2)(b)

- § 87(2)(b) is a male. He is § 87(2)(b)'s son.

Phone Statement

§ 87(2)(b) provided a brief phone statement on May 6, 2014 (encl. C24).

§ 87(2)(b) who was trying to sell the building § 87(2)(b) resided in, had a real estate agent and a couple of individuals go to house to view it. During the visit, § 87(2)(b) said that the air conditioner and other things in the house were broken. § 87(2)(b) contacted § 87(2)(b) and told him that she needed to check to make sure everything was working properly and call a repair man if something needed to be fixed. § 87(2)(b) told § 87(2)(b) "If you ever come near this house, I'm going to teach you a lesson you'll never forget. You don't know who I am."

On the incident date, § 87(2)(b) got a police escort to go into the house, and § 87(2)(b) went with her to take pictures. The police officers asked if "they" could come in to take pictures and § 87(2)(b) said, "Come on in," and opened the door.

Contact Attempts to Civilians

After numerous contact attempts, the CCRB received a letter from § 87(2)(b)'s attorney stating that § 87(2)(b) and § 87(2)(b) did not wish to proceed with an interview, and would not comply with scheduling or attending an interview with the CCRB unless they received a so-ordered subpoena. The letter instructed the CCRB to cease and desist from attempting to contact § 87(2)(b) or § 87(2)(b) and § 87(2)(b) failed to comply with a subpoena to be interviewed at the CCRB.

NYPD Statements

Subject Officer: LT THOMAS SMITH

- *Lt Thomas Smith is a § 87(2)(b)-old white male, who stands 5'9", weighs 170 pounds, and has brown hair and brown eyes.*
- *Lt Smith was on duty from 6:50 a.m. on August 5, 2013, to 3:35 p.m., assigned to 2nd Platoon Commander, working alone, in uniform, with marked RMP 4423.*

Memo Book

Lt Smith had no memo book entries regarding this incident (encl. D1-2).

CCRB Testimony

Lt Smith was interviewed at the CCRB on October 3, 2013 (encl. D3-5).

On August 5, 2013, Lt Smith responded to a radio run of a dispute at the incident location. PO Cimmino was present when he arrived. Lt Smith did not recall if any other officers were present. § 87(2)(b) and § 87(2)(b) approached Lt Smith and PO Cimmino. One of them had a camera. § 87(2)(b) said that she had been having issues with a tenant and needed to inspect the residence due to a water leak.

§ 87(2)(b) met them on the walkway near the residence. § 87(2)(b) told Lt Smith that § 87(2)(b) had been harassing him, jumping out of trees on prior occasions, and making his life miserable. Lt Smith was not aware of any prior incidents in which officers responded to the location. Lt Smith explained to § 87(2)(b) that § 87(2)(b) told him she was there to check a water leak, and to see what damages there were or if any repairs needed to be done. Lt Smith initially stated that he asked § 87(2)(b) "With me here, is it alright if she goes in and takes a look for damages?" Lt Smith later stated that he asked § 87(2)(b) "We're here now, is it alright if she goes in while we're here to resolve this dispute?" § 87(2)(b) complied, without any resistance, and allowed Lt Smith, PO Cimmino, § 87(2)(b) and her son into his residence.

Lt Smith did not tell § 87(2)(b) "I'm sick of this bullshit," or "It's going to end today." Lt Smith did not tell § 87(2)(b) he must let § 87(2)(b) in, nor did he tell him there would be consequences if he did not open his door. If § 87(2)(b) refused to allow § 87(2)(b) into his residence, Lt Smith would have suggested the two go to landlord-tenant court and settle their dispute.

Lt Smith recalled seeing a Verizon box on the living room floor, but did not recall picking it up. Lt Smith did not open a closet, nor did he enter a laundry room on the first floor. Everyone made their way to the second floor because § 87(2)(b) wanted to check the upstairs bathroom. § 87(2)(b) then told Lt Smith that § 87(2)(b) was upstairs sleeping. Lt Smith became agitated at this point because when he had asked § 87(2)(b) earlier if anyone else was inside the house; § 87(2)(b) told him no.

Lt Smith told § 87(2)(b) in a strong, stern tone to stop lying, stating, "Stop bullshitting us," and asked if anyone else was inside the house. Lt Smith was a little agitated that § 87(2)(b) had lied to him, and was

concerned for his safety. Lt Smith used this language to send a message to § 87(2)(b) that the situation was not a game and he was not playing around, and he was upset and concerned for his safety. Lt Smith did not know if he used the right choice of words and stated that the phrase “just came out.” Lt Smith agreed with his representatives suggestion that he used this language to gain compliance. Lt Smith added that he used this language to set the tone of the conversation.

§ 87(2)(b) then went upstairs and woke up his son. Lt Smith, PO Cimmino, § 87(2)(b) and § 87(2)(b) followed. Lt Smith walked upstairs, stood in the hallway, and saw § 87(2)(b) lying in bed. § 87(2)(b) told Lt Smith who he was and how long he had been staying with his parents. Lt Smith did not recall entering § 87(2)(b)'s bedroom. Lt Smith did not enter any other rooms upstairs, including § 87(2)(b)'s master bedroom. Lt. Smith did not recall going upstairs to a loft at any point while in the residence, nor did he recall instructing anyone else to do so.

Lt Smith, PO Cimmino, § 87(2)(b) and § 87(2)(b) all walked down the stairs, to the first floor and then left the residence. Upon leaving, Lt Smith spoke with a neighbor, outside who started telling him that § 87(2)(b) harasses § 87(2)(b). Lt Smith told the neighbor the situation did not concern him and to walk away. Lt Smith left after being there for about ten minutes.

Witness Officer: PO ANTHONY CIMMINO

- *PO Anthony Cimmino is a § 87(2)(b)-old white male who stands 5'6", weighs 155 pounds and has black hair and brown eyes.*
- *PO Cimmino was on duty from 7:05 a.m. on August 5, 2013, to 3:40 p.m., assigned to patrol sector A, driving marked patrol car 5460, dressed in uniform, and working with PO Lipari.*

Memo Book

At 12:15, PO Cimmino responded to a dispute at § 87(2)(b) and spoke to the complainant/victim, § 87(2)(b) who stated the perpetrator told her, “I will teach you a lesson,” and caused annoyance and alarm. A complaint report was prepared at § 87(2)(b) (encl. D6-9).

CCRB Testimony

PO Cimmino was interviewed at the CCRB on October 16, 2013 (encl. D10-12). § 87(2)(g)

When PO Cimmino, PO Lipari and Lt Smith arrived, they were met by § 87(2)(b) who explained that § 87(2)(b) denied her access to his home to check a leak. § 87(2)(b) told police officers that § 87(2)(b) said he would teach her a lesson. Feeling threatened, § 87(2)(b) brought her son along with her.

§ 87(2)(b) initially did not want to let § 87(2)(b) inside. Lt Smith explained to § 87(2)(b) that § 87(2)(b) wanted to inspect the residence since he reported a leak. Lt Smith then asked § 87(2)(b) if, since officers were present, he would allow § 87(2)(b) inside to check for leaks. Later PO Cimmino stated that Lt Smith told § 87(2)(b) “You complained about a leak, do you want the leak fixed? Just let her check and we’ll be on our way.” § 87(2)(b) stated, “Yeah, no problem,” and entered his residence, allowing the officers, § 87(2)(b) and § 87(2)(b) inside. § 87(2)(b) gave them permission to enter.

No officer stated that he was sick of the “bullshit” or told § 87(2)(b) “This is ending today.” PO Cimmino did not tell § 87(2)(b) there would be consequences if he did not open the door, nor did he hear any other officer do so. PO Cimmino did not pick up a box from the living room floor, nor did he see any other officer do so.

§ 87(2)(b) and the officers walked through the living room toward the kitchen area, where there was a closet containing a water heater. § 87(2)(b) checked the water heater for leaks and took pictures.

Lt Smith asked § 87(2)(b) if they could check if anyone else was in the house. The officers then walked upstairs with § 87(2)(b) and § 87(2)(b). Once upstairs, officers noticed a shut door. One of the officers opened the door and saw § 87(2)(b) sleeping in bed. One of the officers told § 87(2)(b) to go back to sleep and shut the door. PO Cimmino did not enter § 87(2)(b)'s bedroom, nor did he see any other officer do so.

Displeased that § 87(2)(b) had lied by saying that no one else was home, Lt Smith asked § 87(2)(b) why he lied and if anyone else was inside the house in a stern tone or "command voice." Lt Smith also stated, "Don't B/S me." PO Cimmino did not hear Lt Smith use profanity or say the word "bullshit." § 87(2)(b) became apprehensive when accused of lying. His demeanor changed and his facial expressions conveyed he was upset.

§ 87(2)(b) entered his master bedroom and Lt Smith, PO Cimmino and PO Lipari followed. § 87(2)(b) remained in the hallway with § 87(2)(b) officers, § 87(2)(b) and § 87(2)(b). § 87(2)(b) proceeded downstairs and left after being there for 15-20 minutes. The officers did not interact with any individuals upon leaving.

PO Cimmino and PO Lipari wrote a complaint report for the threatening statement § 87(2)(b) alleged § 87(2)(b) made towards her. Nothing was done in regards to the complaint because officers did not see the threat take place.

Witness Officer: PO ANDREW LIPARI

- PO Andrew Lipari is a § 87(2)(b)-old white male who stands 5'8", weighs 235 pounds, and has brown hair and brown eyes. PO Lipari wears black glasses.
- PO Lipari was on duty from 7:05 a.m., on August 5, 2013, to 3:40 p.m., assigned in uniform to patrol sector A, working with PO Cimmino, and assigned to marked patrol car 5460.

Memo Book

At 12:15 p.m., PO Lipari and PO Cimmino responded to § 87(2)(b) with Lt. Smith for a 10-61. At 1:14 p.m., PO Lipari prepared a complaint report (93C) (encl. D13-15).

CCRB Testimony

PO Lipari was interviewed at the CCRB on October 22, 2013 (encl. D16-18).

PO Lipari did not recall the circumstances of the entry, nor what occurred once inside the house. He did not recall/hear Lt Smith tell § 87(2)(b) there would be consequences if he did not let § 87(2)(b) inside. Also, PO Lipari did not recall/hear Lt Smith tell § 87(2)(b) "I'm sick of this bullshit, this is ending today." Once inside the residence, PO Lipari and the other officers stood in the living room area; however, PO Lipari did not recall if they remained in the living room the entire time. He did not recall touching any items within the house, entering any rooms, or learning about any other individuals in the house.

NYPD Documents

Event Information

Event information § 87(2)(b) shows that on August 5, 2013, at 12:39 p.m., § 87(2)(b) called 911 requesting police at the incident location regarding his landlord who was parked in a black Toyota at the location (encl. E1).

Other Evidence

Lease

According to § 87(2)(b)'s lease with § 87(2)(b) the landlord may enter the premises in the event of an emergency, to make repairs or improvements, or to show the premises to prospective buyers or tenants. The landlord may also enter the premises to conduct an annual inspection to check for safety or maintenance problems. Except in cases of emergency, a tenant's abandonment of the premises, court order, or where it is impractical to do so, the landlord shall give the tenant one day notice before entering (encl. C10-13).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of October 17, 2013 with regard to the incident (encl. F2).

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. B2)

Subject Officer(s) CCRB History

- Lt Thomas Smith has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. B1).

Conclusion

Identification of Subject Officer(s)

Lt Smith affirmed interacting with § 87(2)(b)

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) alleged that when Lt Smith exited his residence he told § 87(2)(b) "Shut your mouth, old man, if you know what's good for you." However, § 87(2)(b) stated that Lt Smith told him, "Mind your business, old man." § 87(2)(g)

Allegation A – Discourtesy: At the entrance of § 87(2)(b) Lieutenant Thomas Smith spoke discourteously to § 87(2)(b)

According to § 87(2)(b) when officers initially approached him at his front door, Lt Smith stated that he was sick of the "bullshit," that it was going to end, that § 87(2)(b) was going to let § 87(2)(b) inside his residence.

Lt Smith testified that he did not use the word bullshit when requesting entry into § 87(2)(b)'s residence. PO Cimmino testified that he did not hear any officer use the word "bullshit" while gaining entry into the apartment. PO Lipari did not recall hearing Lt Smith tell § 87(2)(b) that he was sick of the "bullshit."

§ 87(2)(g)

Allegation B – Abuse of Authority: Lieutenant Thomas Smith entered and searched § 87(2)(b) in Staten Island.

According to § 87(2)(b) Lt Smith told him he needed to let § 87(2)(b) into his residence to inspect a leak and that there would be consequences if he did not open his door. Feeling pressured, § 87(2)(b) allowed the officers into his residence. Once inside, § 87(2)(b) stated that Lt Smith picked up a box off his floor. § 87(2)(b) led the officers to the closet where the suspected leak was and opened the closet door. § 87(2)(b) then led the officers upstairs upon their request.

§ 87(2)(b) stated that § 87(2)(b) allowed the officers to enter his residence. § 87(2)(b) stated that when the officers asked § 87(2)(b) if they could go inside to take pictures, § 87(2)(b) told them "Come on in," and opened the door for them.

Lt Smith and PO Cimmino both testified Lt Smith asked § 87(2)(b) if, since the officers were there now, § 87(2)(b) could go inside to inspect the residence for a possible leak or any damages, and § 87(2)(b) complied. PO Cimmino also stated that Lt Smith told § 87(2)(b) "You complained about a leak, do you want the leak fixed? Just let her check and we'll be on our way." § 87(2)(b) complied, stating, "Yeah, no problem," and entered his residence, allowing the officers, to follow inside. PO Lipari did not recall the circumstances of the entry or what occurred once inside.

Lt Smith did not recall picking up a box or entering § 87(2)(b)'s bedroom. He stated that he did not enter any others bedrooms; PO Cimmino testified that Lt Smith, himself and PO Lipari followed § 87(2)(b) into his master bedroom. PO Cimmino did not see Lt Smith pick up any boxes while inside the residence.

§ 87(2)(g)

Allegation C – Discourtesy: Inside of § 87(2)(b) Lieutenant Thomas Smith spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that Lt Smith used the term "bullshit" when attempting to gain entry into the residence. Lt Smith admitted to using the word "bullshit" when he discovered § 87(2)(b) lied to him about someone else being present inside the residence. Lt Smith was a little agitated that § 87(2)(b) lied to him, and was concerned for his safety because he did not know who else was inside the residence. Lt Smith told § 87(2)(b) in a stern tone, to stop lying and stop "bullshitting" the officers, and then asked if anyone else was inside the house.

Lt Smith used this language to send a message to § 87(2)(b) that the situation was not a game and he was not playing around. Lt Smith did not know if he used the right choice of words and stated the words “just came out.” Lt Smith agreed with the suggestion of his representative that he used this language to gain compliance. Lt Smith also used the discourteous language to set the tone of the conversation.

PO Cimmino testified that when Lt Smith found out § 87(2)(b) was inside the residence, Lt Smith told § 87(2)(b) in a stern tone, “Don’t B/S me,” but did not use the word “bullshit.”

An officer must be courteous and respectful when interacting with members of the public (encl. A1). Case law indicates that depending on the circumstances, an officer may resort to using profanity to forcefully make a point, to gain compliance with an order or direction, or in the heat of a highly dangerous situation. *Police Department v. Matias*, OATH Index Nos. 1996/00 & 1997/00 (Sept. 8, 2000) (encl. A5-14).

§ 87(2)(g)
[Redacted]

§ 87(4-b) § 87(2)(g)
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date